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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,615	09/21/2001	Joseph Yoder	61773.02101	7143

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EXAMINER

KOVACS, ARPAD F

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 12/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/960,615

Applicant(s)

YODER ET AL.

Examiner

Árpád Fábián Kovács

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 September 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12 is/are allowed.
- 6) ☒ Claim(s) 1-11, 13, 15-32, 34-36, 38, 39 and 41 is/are rejected.
- 7) ☒ Claim(s) 14, 33, 37 and 40 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Information Disclosure Statement

1. The listing of references in the specification is not a proper information disclosure statement. 37 CFR 1.98(b) requires a list of all patents, publications, or other information submitted for consideration by the Office, and MPEP § 609 A(1) states, "the list may not be incorporated into the specification but must be submitted in a separate paper." Therefore, unless the references have been cited by the examiner on form PTO-892, they have not been considered.

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Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

ref 28 (wheel axle, pg 10, line 17); ref Z (pg 13, 2nd paragraph, last 2 lines); ref L (pg 14, last paragraph, line 2); ref A (pg 16, line 2); ref 14 (pg 16, line 3); ref 36 (pg 16, line 6, it appears that ref 36 should be ref 56 & all occurrences should be corrected on all drawings or pages); ref 38 (pg 16, last line; it appears it should be ref 34); ref 61 (pg 19, last paragraph, line 5); ref 67 & 59 (pg 20, line 1); ref 45 (pg 21, 2nd paragraph, line 3).

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show ref 40 being shorter at exit and longer at entrance (pg 12, last paragraph, line 1-2) as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "34" has been used to designate both flange members and

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conveyor. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore,

the means for adjusting the space between adjacent ones of said longitudinal bars (cl. 2, line 4-5; it is noted on page 10, last paragraph and continuous on page 11, that the it is not the spacing between the bars is adjusted);

means for moving ... along an endless circular path (cl 3, line 2);

a collection area (cl 3 & 12 & 37, last line);

a hitch (cl 5, line 1);

a tractor or pulling machine (cl 5, line 2; cl 15, line 1);

must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. It is noted that elements not shown and/or not disclosed are not searched and/or considered in applying the prior art rejection.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

6. The disclosure is objected to because of the following informalities: on page 16, last next to last line, “desirable” should be – desirably –.

Appropriate correction is required.

7. The specification lacks positive antecedent basis for:

in claims 2, 12, line 1 & 9 respectively, recitation of “sinuous” member is confusing, the endless belt, which the applicant may refer to does not have “sinuous” shape as shown and/or disclosed in the drawings/specification;

in claims 2 & 7, the spacing between the bars (mounted to the endless member) are not adjustable; for examination purposes the means for adjusting & bars are positionable at variable spacing along said endless chain will not be considered;

in claim 26, “only some of said finger members are rigid” (assuming to mean that the other majority is not rigid, also unclear what is some means, 49% or 1% of the finger members);

in claim 30, the means for separately adjusting distance of separation between the arrays at forward and rearward portions is not disclosed and/or shown, the spacing bar ref 54, cannot separately adjust two different distances both at the front & rear;

in claim 31, lines 1-5 are not shown and/or disclosed.

Claims lacking positive antecedent basis in the specification will not be considered on their merit.

Claim Objections

8. Claim 16 is objected to because of the following informalities: — . — needed at the end of the sentence. Appropriate correction is required.

9. Claim 24 is objected to because of the following informalities: "portions be homogeneous" appears to be missing some phrase/word (line 2). Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 3, 7, 10-11, 16-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites the limitation "said sinuous members" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 7 recites the limitation "said endless chain" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim 10 recites the limitation "the means for supplying energy to propel ... arrays" in lines 1-2. There is insufficient antecedent basis for this limitation in the claim.

In re claims 16 & 17, the recitation of "optional" renders the claim indefinite and fails to positively claim the limitation in the claim.

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Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

13. Claims 1, 4-5, 23, 31, 34-36, 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Pocock (1439187).

In re independent claims 1, 34-35, Pocock discloses a frame (A), wheels (B or C), at least one pair of facing arrays of finger members / endless webs with stripping means / endless movable array of finger members generally upstanding longitudinally elongated and substantially planar (16);

In re claims 4, 18, means for vertically adjusting the arrays (page 2, lines 50-75);

In re claims 23, 36, the plurality of finger members projecting transversely from the sheet like planar portions / flexible web (chain 16, see fig 1 or 7);

As applied to claim(s) 41, in view of the structure disclosed/taught by Pocock, the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

14. Claims 1-2, 4-5, 7-9, 15, 18, 22-23, 27-31, 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Polisena (2515966).

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In re independent claims 1, 34-35, Polisena discloses a frame (10), wheels (28), at least one pair of facing arrays of finger members / endless webs with stripping means / endless movable array of finger members generally upstanding longitudinally elongated and substantially planar (65 & 70, 63 & 69);

In re claim 2, the finger members extending transversely from a plurality of longitudinally elongated horizontal bars (64), and the web / endless member (chain) connected to the bars for carrying the bars along an endless path (fig 8);

In re claim 4, means for vertically adjusting the arrays relative to the frame (see fig 1, ref 43, 50);

In re claims 8, 18, means for adjusting distance of separation including between the arrays / web and from the ground independently (see fig 1, the dashed lines show the distance of separation);

In re claim 9, receptacle means for attaching the fingers to elongated horizontal bars (see fig 7, at 64 & 65);

In re claim 27, as shown on fig 1, at the front section, at entrance, near where gatherer intercepts the crop and the like, the finger members of the two arrays interdigitate in at least a portion of the region;

In re claims 23, 36, the plurality of finger members projecting transversely from the sheet like planar portions / flexible web (see fig 2);

In re claims 28-30, as shown on fig 1, dashed lines illustrates that at point of entrance the arrays / web can be less proximate to each other.

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As applied to claim(s) 13, 16-17, 32, 41, in view of the structure disclosed/taught by Polisena, the method of operating/using the device is inherent since it is the normal and logical manner in which the device is used.

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Claim Rejections - 35 USC § 103

15. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

16. Claims 13, 19-21, 24-26, 38-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pocock (1439187) or Polisena (2515966).

In re claims 19-21 & 24-26, 38-39, discloses the claimed invention except for the fingers (or some finger members) and/or sheet like portions being of rigid, resilient, elastomeric, or homogeneous material.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fingers of resilient, flexible, elastomeric, or homogeneous material, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

In re claim 24, discloses the claimed invention except for the arrays being integral, one piece molded construction.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the fingers integral, one piece molded construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

17. Claims 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Polisena (2515966).

In re claim 22, discloses the claimed invention except for the bars & finger members being integral, one-piece construction.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the bars & finger members being integral, one piece construction, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. *Howard v. Detroit Stove Works*, 150 U.S. 164 (1893).

As applied to claim(s) 13, 15, 32, in view of the structure disclosed/taught by Pocock, the method of operating/using the device would have been obvious since it is the normal and logical manner in which the device is used.

18. Claims 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pocock (1439187) or Polisena (2515966) in view of Yoder (6282877).

Pocock or Polisena discloses the claimed invention above except for a hydraulic piston cylinder combination for vertically adjusting the frame relative wheel.

Yoder discloses such device (col. 2, lines 5-28).

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the device of Pocock or Polisena with a hydraulic piston cylinder as taught by Yoder, in order to provide better follow the counter of the field.

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Allowabl Subject Matt r

19. Claim 12 is allowed.

20. Claims 3, 10-11 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

21. Claims 14, 33, 37, 40 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Conclusion

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hansen et al., Urich et al., Smith, Korthuis et al., Hobhouse, Ferraro, Propheter, Woodson, Shane.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Árpád Fábián Kovács whose telephone number is 703 308 5897. The examiner can normally be reached on Mo-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308 3870. The fax phone numbers for the organization where this application or proceeding is assigned are 703 305 7687 for regular communications and 703 308 8623 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308 1113.



Árpád Fábián Kovács
Examiner
Art Unit 3671

ÁFK
November 25, 2002